

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

TUESDAY, THE 13TH FEBRUARY 2007 / 24TH MAGHA 1928

RSA.No. 1199 of 2006()

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AS.510/2005 of I ADDL.DISTRICT COURT, ERNAKULAM  
OS.1480/04 OF II ADDL.MUNSIFF COURT, ERNAKULAM  
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APPELLANT/APPELLANT/PLAINTIFF  
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CHAKIAT RAJESH MENON,  
AGED 38 YEARS, COMPANY EXECUTIVE,  
SON OF M.S.MENON, RESIDING AT COCHIN CORPORATION  
NO., 'SRUTHI', RAVIPURAM ROAD, COCHIN-16.

BY ADV. SRI.K.V.VAIDYANATHAN  
SRI.V.J.JOHN

RESPONDENTS: DEFENDANT  
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CORPORATION OF COCHIN,  
REP. BY ITS SECRETARY,  
COCHIN CORPORATION MAIN OFFICE,  
COCHIN-11.

BY //

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION  
ON 13/02/2007, THE COURT ON THE SAME DAY PASSED THE  
FOLLOWING:

ORDER ON I.A.NO.2853/06 IN RSA 1199/06

DISMISSED

13/2/2007

SD/-M.SASIDHARAN NAMBIAR,JUDGE.

//True copy//

PA to Judge.

**M.SASIDHARAN NAMBIAR,J.**

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R.S.A.NO.1199 OF 2006  
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Dated 13<sup>th</sup> February 2007

**J U D G M E N T**

Appellant is plaintiff in O.S.148/04 on the file of Second Additional District court, Ernakulam. He filed suit seeking decree for permanent prohibitory injunction restraining the respondent Corporation from recovering tax pursuant to Ext.A1 notice issued under Section 234 of Kerala Municipalities Act. Learned Munsiff dismissed the suit holding that remedy of appellant is to file an appeal as provided under Municipalities Act and therefore suit is not maintainable. Though appellant challenged the decree and judgment before District court, Ernakulam, confirming the findings of learned Munsiff the appeal was dismissed. Second appeal is filed challenging the said judgment contending that plea of the appellant was that Corporation is not entitled to realise the amount barred by time and therefore appellant should have been granted the decree sought for.

2. Learned counsel appearing for appellant was

heard.

3. Sub section 1 of Section 509 of Kerala Municipalities Act provides that appeal may be preferred to the council against any notice issued or any order passed or action taken by Chairperson or the Secretary under any of the provisions of the Act except under Sections 390, 391, 395, 406 and 408 or the rules or bye-laws or regulations made thereunder. Sub section 2 provides for an appeal against any notice or order of the Secretary on the levy of tax, before the Standing committee for Finance in the case of Town Panchayat or Municipal council and to the Standing Committee for the appeals of taxation in the case of Municipal Corporation. Therefore, appellant has definitely a right of appeal against Ext.A1 notice. The plea of bar of limitation raised by appellant could be raised in such an appeal. In such circumstances, no substantial question of law arises in the appeal.

Regular Second appeal is dismissed.

**M.SASIDHARAN NAMBIAR,  
JUDGE.**

uj.